

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4 UNITED STATES OF AMERICA, § CRIMINAL NO. 5:14-1014(3)

§

§

v. § May 5, 2016

§

MIKE PACE, §

§

DEFENDANT. §

§

9

10 TRANSCRIPT OF RE-ARRAIGNMENT

11 BEFORE THE HONORABLE HENRY BEMPORAD

12 MAGISTRATE COURT JUDGE

13 APPEARANCES:

14 For the Government: SAM L. PONDER, AUSA  
15 Office of US Attorney  
16 601 NW Loop 410, Suite 600  
17 San Antonio, Texas 78216

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23  
24  
25 For the Defendant: DEBRA L. PARKER, ESQ.  
Produced by mechanical stenography; computer-aided  
transcription

Leticia Ornelas Rangel, CSR

P-R-O-C-E-E-D-I-N-G-S

1 THE COURT SECURITY OFFICER: All rise.

2  
3 THE COURT: Good afternoon. Please be seated. I  
4 have five defendants before me today for a re-arraignment and  
5 guilty plea proceedings. Three of the defendants were on the  
6 same case. That is SA:14-CR-1014. And that is United States  
7 of America v. First, Mike Pace.

8 DEFENDANT PACE: Yes, sir.

9 MR. SHEARER: David Shearer standing in for Mike  
10 Hardy, Your Honor, for the United States.

11 THE COURT: On all?

12 MR. SHEARER: On everything.

13 MS. PARKER: Debra Parker for Mr. Pace.

14 THE COURT: All right. Thank you. Mr. Pace is  
15 here. The next defendant on that case is Anita Louise  
16 Genivra.

17 MR. BROWN: She's not here.

18 THE COURT: All right. Mr. Brown, are you entering  
19 an appearance on her behalf?

20 MR. BROWN: Yes, Your Honor.

21 THE COURT: All right. And the next defendant on  
22 that case is Mandy Branham.

23 MR. FLORES: Gerardo Flores for Ms. Branham.

24 THE COURT: All right. Very well. And I see Ms.  
25 Branham is here. Then we have two other cases set this

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1 afternoon. The first case is SA:16-CR-242, United States of  
2 America vs. Jose Luis Martinez-Amaya.

3 MR. SHEARER: David Shearer standing in for Judy  
4 Patton on the immigration cases, Your Honor.

5 THE COURT: All right.

6 MR. PICKELL: Steven Pickell, counsel for  
7 Mr. Martinez.

8 THE COURT: All right. And I see that Mr. Martinez  
9 is here as well, that Martinez-Amaya is here as well.

10 And then the last case is SA:16-CR-243. United  
11 States of America v. Bernardo Martinez-Orduna.

12 MR. SHAFFER: Present with counsel, Your Honor,  
13 George Shaffer for defendant.

14 THE COURT: All right.

15 MR. SHAFFER: The only thing I don't see is the  
16 court interpreter.

17 THE COURT: Ah, and he needs an interpreter?

18 MR. SHAFFER: It would be -- it would be.

19 THE COURT: Well, we will get one. Okay.

20 MR. SHAFFER: It would be best.

21 MR. PEREZ: Adam Perez for Mr. Martinez.

22 THE COURT: All right. Very well. Let's see if we  
23 have one available. It may be that the interpreter is in  
24 another courtroom at this time, in which case, I will handle  
25 the other three defendants and then I will handle these two.

1                   MR. PEREZ: If need be, Judge, I can interpret for  
2 my client.

3                   THE COURT: No, that is too difficult. I am not  
4 going to ask you to do both things at once. She is on her  
5 way? Okay. It will just be a moment. She is on her way.

6                   In the other case, let me mention that I see that  
7 Ms. Genivra and Mr. Pace and Ms. Branham are all pleading  
8 guilty to superseding informations and under plea agreements;  
9 is that correct?

10                  MR. BROWN: Yes, Your Honor.

11                  MS. PARKER: That's correct, Your Honor.

12                  MR. FLORES: Yes, Your Honor.

13                  THE COURT: All right. Very well. And,  
14 Mr. Shearer and Mr. Pickell, I understand there is an agreed  
15 factual basis in Mr. Martinez-Amaya's case?

16                  MR. SHEARER: Correct, Your Honor.

17                  MR. PICKELL: Yes, Your Honor.

18                  THE COURT: All right. Very well. All right.

19                  Ladies and gentlemen, it is my understanding from  
20 your attorneys that each of you has decided to plead guilty  
21 to a charge against you, either in the original indictment  
22 against you or in a superseding information. It is my job to  
23 make sure that your decision is knowing and voluntary, that  
24 you understand the nature of the charge you are pleading  
25 guilty to, and the consequences, the penalties you could face

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1 by pleading guilty today. I also have to make sure that you  
2 understand your constitutional rights. The rights that you  
3 give up by pleading guilty. And to make sure that there is a  
4 factual basis for your plea. In other words, facts that  
5 would support the plea that you are entering.

6 Now, to do these things, I am going to have to ask  
7 each of you some questions. And so I am going to ask my  
8 courtroom deputy to place each of you under oath at this  
9 time.

10 THE COURTROOM DEPUTY: Please raise your right  
11 hand. Do you swear or affirm the testimony which you may  
12 give in the case before the Court, is the truth, the whole  
13 truth, and nothing but the truth?

14 DEFENDANT BRANHAM: Yes.

15 DEFENDANT PACE: Yes.

16 THE INTERPRETER: Both yes.

17 THE COURT: All right. Now the first thing I need  
18 to ask you to do is I want to make sure that you are  
19 understanding my questions and that I can understand your  
20 answers. So let me ask you this: Whether currently you are  
21 suffering from any physical ailments or taking any sort of  
22 medication, have any sort of physical or mental condition or  
23 under the influence of drugs or alcohol? Anything like that  
24 would make it difficult for you to understand me today?

25 I will start with you, Ms. Branham. Any problems

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1 like that, ma'am?

2 DEFENDANT BRANHAM: No, sir.

3 THE COURT: How about you, Mr. Pace?

4 DEFENDANT PACE: No, sir.

5 THE COURT: Mr. Martinez-Amaya, any problems like  
6 that, sir?

7 DEFENDANT MARTINEZ-AMAYA: No.

8 THE COURT: And how about, Mr. Martinez-Orduna?

9 DEFENDANT MARTINEZ-ORDUNA: No.

10 THE COURT: All right. And, Ms. Ginerva, any  
11 problems like that, ma'am?

12 DEFENDANT GINERVA: No, Your Honor.

13 THE COURT: All right. Very well. Let me ask  
14 counsel for each of the defendants whether they have any  
15 doubts as to the competency of their client.

16 MR. FLORES: No, Your Honor, as to Ms. Branham.

17 MR. PICKELL: No, Your Honor.

18 MS. PARKER: No, Your Honor, as to Mr. Pace.

19 MR. BROWN: No.

20 MR. SHAFFER: None as to Mr. Martinez-Orduna.

21 THE COURT: All right. Now you have been placed  
22 under oath. Each of you have to answer my questions  
23 truthfully. If you were to answer them falsely, you could be  
24 prosecuted for perjury or for false statement. So if at  
25 anytime you need me to repeat a question or you need to speak

1 to your attorneys before answering a question, that is fine,  
2 let me know and I will repeat the question or give you an  
3 opportunity to talk to your attorneys. Now, the first thing  
4 I would like to point out to each of you, you should have a  
5 copy of the indictment or information in your hands. And if  
6 you look at the top of the indictment or information, you  
7 will see a case number, it is in big bold letters for Mr.  
8 Martinez-Amaya and Mr. Martinez-Orduna. And it is in smaller  
9 numbers in the superseding information for the other three  
10 defendants.

11 The thing I want to point to -- out about that is  
12 in each of those at the end of the case number there are  
13 letters. Either O-G for Orlando-Garcia or X-R for Xavier  
14 Rodriguez. These are the district judges in your case.  
15 These are the judges who will be imposing sentence in your  
16 case. You have the right to plead guilty before the district  
17 judge. Or, if you agree, you can plead guilty before me  
18 today, a magistrate judge.

19 So I will start with you, Ms. Ginerva. Do you  
20 agree to plead guilty before me today?

21 DEFENDANT GINERVA: Yes, Your Honor.

22 THE COURT: All right. How about you,  
23 Mr. Martinez-Orduna. Do you agree?

24 DEFENDANT MARTINEZ-ORDUNA: Yes.

25 THE COURT: And you, Mr. Martinez-Amaya?

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1 DEFENDANT MARTINEZ-AMAYA: Yes.

2 THE COURT: Mr. Pace?

3 DEFENDANT PACE: Yes.

4 THE COURT: And, Ms. Branham?

5 DEFENDANT BRANHAM: Yes, sir.

6 THE COURT: All right. Now I also want to talk to  
7 each of you about the charges that are in front of us today.

8 In the cases of Ms. Ginerva and Mr. Pace and Ms. Branham,  
9 each of you are being charged with a superseding information.

10 What that means is you originally had an indictment in the  
11 case but the U.S Attorney has filed a superseding document.

12 Each of these cases charges one offense. Each of these  
13 informations. That offense is conspiracy to possess with  
14 intent to distribute methamphetamine.

15 And it does -- it indicates no amount in those  
16 superseding informations. Now, let me -- another thing I  
17 want to point out is I have received in each of your cases a  
18 waiver of your right to indictment. So let us first talk  
19 about that, then we will talk about this information. I will  
20 start with you, Ms. Ginerva.

21 You have to understand that you have a right to  
22 have this case brought before a grand jury. And before you  
23 plead guilty to this superseding charge, you have a right to  
24 have the grand jury consider that. But you can waive that  
25 right and go forward today. So let me ask you, ma'am, do you

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1 waive the right to indictment in this case?

2 DEFENDANT GINERVA: I do, Your Honor.

3 THE COURT: All right. How about you, Mr. Pace?

4 DEFENDANT PACE: Yes, sir.

5 THE COURT: And you, Ms. Branham?

6 DEFENDANT BRANHAM: Yes, sir.

7 THE COURT: All right. And, Ms. Ginerva, do you  
8 understand the nature of the charge against you? Possess --  
9 a conspiracy to possess and to distribute methamphetamine?

10 DEFENDANT GINERVA: I do, Sir.

11 THE COURT: All right. Same question for you,  
12 Mr. Pace?

13 DEFENDANT PACE: Yes, Sir.

14 THE COURT: And you, Ms. Branham?

15 DEFENDANT BRANHAM: Yes, Sir.

16 THE COURT: You understand? All right. Now in  
17 each of your cases there is a plea agreement. The plea  
18 agreement appears to be signed by you and signed by your  
19 attorneys. I will start with you, Ms. Ginerva. Did you sign  
20 that plea agreement?

21 DEFENDANT GINERVA: I did, Your Honor.

22 THE COURT: Did you review it with your attorney?

23 DEFENDANT GINERVA: I did, Your Honor.

24 THE COURT: And do you agree to it?

25 DEFENDANT GINERVA: I do, Your Honor.

1                   THE COURT: All right. Then, as to the charge in  
2 the superseding information, conspiracy to possess  
3 methamphetamine with intent to distribute, how do you plead,  
4 guilty or not guilty?

5                   DEFENDANT GINERVA: I plead guilty.

6                   THE COURT: All right. Same questions for you,  
7 Mr. Pace, did you review this plea agreement with your  
8 attorney?

9                   DEFENDANT PACE: Yes, sir.

10                  THE COURT: And did you sign it?

11                  DEFENDANT PACE: Yes, Sir.

12                  THE COURT: And do you agree to it?

13                  DEFENDANT PACE: Yes, Sir.

14                  THE COURT: And as to the charge of -- in the  
15 superseding information against you, how do you plead, guilty  
16 or not guilty?

17                  DEFENDANT PACE: Guilty.

18                  THE COURT: Same questions for you, Ms. Branham,  
19 did you sign the plea agreement in this case?

20                  DEFENDANT BRANHAM: Yes.

21                  THE COURT: And did you review it with your  
22 attorney?

23                  DEFENDANT BRANHAM: Yes, Sir.

24                  THE COURT: And you agree to it, ma'am?

25                  DEFENDANT BRANHAM: Yes, sir.

1                   THE COURT: Then as to the charges in the  
2 superseding information, how do you plead, guilty or not  
3 guilty?

4                   DEFENDANT BRANHAM: Guilty.

5                   THE COURT: All right. Now let me turn to  
6 Mr. Martinez-Amaya and Mr. Martinez-Orduna. Gentlemen, in  
7 your cases, you are charged by indictment with one crime. It  
8 is the same crime in each case, being an alien, a citizen of  
9 another country, here illegally after having been deported or  
10 removed and not having received permission to apply to come  
11 back into the country.

12                  Mr. Martinez-Orduna, did you receive a copy of the  
13 indictment and discuss it with your attorney?

14                  DEFENDANT MARTINEZ-ORDUNA: Yes.

15                  THE COURT: And do you understand the nature of the  
16 charge against you, sir?

17                  DEFENDANT MARTINEZ-ORDUNA: Yes.

18                  THE COURT: And to the charge of illegal reentry in  
19 your case, how do you plead, guilty or not guilty?

20                  DEFENDANT MARTINEZ-ORDUNA: Guilty.

21                  THE COURT: All right. Mr. Martinez-Amaya, same  
22 question, sir. Did you receive a copy of the indictment and  
23 discuss it with your attorney?

24                  DEFENDANT MARTINEZ-AMAYA: Yes.

25                  THE COURT: And do you understand the nature of the

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1 charge against you, sir?

2 DEFENDANT MARTINEZ-AMAYA: Yes.

3 THE COURT: Then as to the charge of the indictment  
4 against you, how do you plead, guilty or not guilty?

5 DEFENDANT MARTINEZ-AMAYA: Guilty.

6 THE COURT: All right. Now before I can recommend  
7 to any of the -- to the district judges that any of your  
8 pleas be accepted, I have to advise you as to the rights you  
9 are giving up, the constitutional rights you are giving up by  
10 pleading guilty today. Each of you have the right to plead  
11 not guilty. If you pled not guilty, the government,  
12 represented by the prosecutor, would be called upon to  
13 present witnesses against you at trial.

14 You have a right to be represented by your attorney  
15 throughout the proceedings, to cross-examine and confront any  
16 witness against you, you have the right to present your own  
17 witnesses in your defense, you have the right to testify in  
18 your own defense. But if you chose not to testify, you have  
19 the right to remain silent, and it could not be held against  
20 you, if you decided to remain silent.

21 Most importantly, each of you, ladies and  
22 gentlemen, would be presumed innocent to these charges. It  
23 would be the government's burden to prove you guilty beyond a  
24 reasonable doubt to a jury.

25 Ms. Ginerva, do you understand that?

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1 DEFENDANT GINERVA: Yes, Your Honor, I do.

2 THE COURT: How about you, Mr. Martinez-Orduna, do  
3 you understand, sir?

4 DEFENDANT MARTINEZ-ORDUNA: Yes.

5 THE COURT: And, Mr. Martinez-Amaya?

6 DEFENDANT MARTINEZ-AMAYA: Yes.

7 THE COURT: Mr. Pace?

8 DEFENDANT PACE: Yes, Sir.

9 THE COURT: And, Ms. Branham?

10 DEFENDANT BRANHAM: Yes, sir.

11 THE COURT: All right. Now by pleading guilty, you  
12 are giving up all these rights. You are allowing the  
13 district judge to find you guilty based solely on your own  
14 statements.

15 Ms. Branham, do you understand?

16 DEFENDANT BRANHAM: Yes, Sir.

17 THE COURT: And how about you, Mr. Pace?

18 DEFENDANT PACE: Yes, Sir.

19 THE COURT: Mr. Martinez-Amaya, do you understand?

20 DEFENDANT MARTINEZ-AMAYA: Yes.

21 THE COURT: Mr. Martinez-Orduna?

22 DEFENDANT MARTINEZ-ORDUNA: Yes.

23 THE COURT: And, Ms. Ginerva?

24 DEFENDANT GINERVA: Yes, Your Honor.

25 THE COURT: All right. Now I also want to talk to

1 you about the consequences you face by pleading guilty today.  
2 And in the cases of Mr. Pace and Ms. Branham and Ms. Ginerva,  
3 those consequences are actually set out in the plea  
4 agreement. And that page is near the end of the plea  
5 agreement. I think it is Page 11 in each of the plea  
6 agreements. Anyway, those penalties are as follows: By your  
7 plea to this charge in the superseding information, each of  
8 you face up to 20 years of imprisonment, up to a  
9 million-dollar fine, there is a minimum term of supervised  
10 release of three years. And the reason that is a minimum  
11 term, is the federal drug statute does not set a maximum for  
12 supervised release.

13 And there is also a one-hundred dollar special  
14 assessment that applies in any federal felony case. These  
15 are the penalties that you face by pleading guilty today.

16 Do you understand, Ms. Ginerva?

17 DEFENDANT GINERVA: I do, Your Honor.

18 THE COURT: Mr. Pace, do you understand?

19 DEFENDANT PACE: Yes, sir.

20 THE COURT: And, Ms. Branham?

21 DEFENDANT BRANHAM: Yes, sir.

22 THE COURT: Now let me ask the prosecution and  
23 counsel, it indicates that there is a claim for forfeiture of  
24 certain assets. I don't see that in the information. Do you  
25 have any information about that, Mr. Shearer?

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1                   MR. SHEARER: I don't either, Your Honor. I have  
2 never seen that language before. I have never seen a plea  
3 agreement that looks like this before. So, yes, it's not in  
4 the indictment, and it is not in the information, it's not in  
5 the plea agreement to forfeit it.

6                   THE COURT: So I don't know what that is about.  
7 Any defense counsel have any comments on what the forfeiture  
8 of assets they are talking about? Is there some issue left  
9 that we need to address with regard to that? Mr. Brown or  
10 Mr. Flores?

11                  MR. BROWN: My client tells me it is about  
12 Mr. Stout's land, she believes.

13                  DEFENDANT GINERVA: Yes.

14                  THE COURT: Oh, so it is a -- maybe it is another  
15 defendant.

16                  DEFENDANT GINERVA: It would be.

17                  THE COURT: All right. Very well. So we don't  
18 have to go into that. Thank you. All right.

19                  Now let me turn to Mr. Martinez-Amaya and  
20 Mr. Martinez-Orduna. For the crime in the indictment against  
21 you of the illegal reentry crime, you face up to two years  
22 imprisonment, up to a \$250,000 fine, up to one year of  
23 supervised release, and a one-hundred dollar mandatory  
24 special assessment.

25                  Do you understand that these are the penalties you

1 face, Mr. Martinez-Orduna?

2 DEFENDANT MARTINEZ-ORDUNA: Yes.

3 THE COURT: And how about you, Mr. Martinez-Amaya?

4 DEFENDANT MARTINEZ-AMAYA: Yes.

5 THE COURT: All right. Now, I need to talk to each  
6 of you about a couple of these penalties in a little bit more  
7 detail. First, let us talk about imprisonment. In  
8 determining the imprisonment term to impose, if to impose  
9 imprisonment and so forth, the district judge has to consider  
10 something called the sentencing guidelines. Now there are a  
11 set of rules that are created by the Sentencing Commission in  
12 Washington, and they set up a range of punishment for each  
13 defendant, based on the background of that defendant also the  
14 nature of the offense they are pleading guilty to.

15 What each of you need to understand is, those  
16 guidelines are advisory only. The judge has to consider them  
17 but he does not have to follow them. He can depart from the  
18 guideline for reasons that the Sentencing Commission has  
19 identified or he can just reject the guidelines and impose  
20 any sentence he believes to be appropriate under the  
21 applicable sentencing statutes.

22 I will start with you, Ms. Ginerva. Have you  
23 discussed the guidelines with your attorney?

24 DEFENDANT GINERVA: I have, Your Honor.

25 THE COURT: And do you understand they are advisory

1 only? They are not binding in your case.

2 DEFENDANT GINERVA: Yes, Your Honor.

3 THE COURT: All right. Same questions for you,  
4 Mr. Martinez-Orduna. Have you discussed the guidelines with  
5 your attorney?

6 DEFENDANT MARTINEZ-ORDUNA: Yes.

7 THE COURT: And you understand that they are  
8 advisory only in your case? They are not binding.

9 DEFENDANT MARTINEZ-ORDUNA: Yes.

10 THE COURT: Mr. Martinez-Amaya, same questions for  
11 you, sir. Did you discuss the guidelines with your attorney?

12 DEFENDANT MARTINEZ-AMAYA: Yes.

13 THE COURT: And you understand they are advisory  
14 only in your case?

15 DEFENDANT MARTINEZ-AMAYA: Yes.

16 THE COURT: All right. Mr. Pace, same questions  
17 for you, sir. Did you discuss the guidelines with your  
18 attorney?

19 DEFENDANT PACE: Yes, sir. Yes.

20 THE COURT: And you understand they are advisory  
21 only?

22 DEFENDANT PACE: Yes, Sir.

23 THE COURT: And, Ms. Branham, same questions.

24 DEFENDANT BRANHAM: Yes, Sir.

25 THE COURT: As to both questions?

1 DEFENDANT BRANHAM: Yes, sir.

2 THE COURT: All right. Thank you, very much. Now  
3 I also wanted to speak to you about supervised release.  
4 There is no parole in the federal system. If imprisonment is  
5 imposed, that is the time you are going to do. There is only  
6 a small amount off for good time. But there is supervised  
7 release. It is like parole. You are released on conditions.  
8 You have to follow those conditions. If you fail to follow  
9 the conditions, you can have your release revoked and go back  
10 to prison without credit for the time you had on release.

11 Ms. Ginerva, do you understand?

12 DEFENDANT GINERVA: I do, Your Honor.

13 THE COURT: Mr. Martinez-Orduna, do you understand  
14 this, sir?

15 DEFENDANT MARTINEZ-ORDUNA: Yes.

16 THE COURT: Mr. Martinez-Amaya?

17 DEFENDANT MARTINEZ-AMAYA: Yes.

18 THE COURT: Mr. Pace?

19 DEFENDANT PACE: Yes, sir.

20 THE COURT: And, Ms. Branham?

21 DEFENDANT BRANHAM: Yes, sir.

22 THE COURT: All right. Let me ask you,  
23 Ms. Branham, are you a citizen of the United States?

24 DEFENDANT BRANHAM: Yes, sir.

25 THE COURT: How about you, Mr. Pace?

1 DEFENDANT PACE: Yes, Sir?

2 THE COURT: Ms. Ginerva, are you a citizen of the  
3 United States?

4 DEFENDANT GINERVA: Yes, I am, Your Honor.

5 THE COURT: All right. Then I need to talk to  
6 Mr. Martinez-Amaya and Mr. Martinez-Orduna about one other  
7 matter. Gentlemen, you are charged with being aliens,  
8 citizens of other countries, here illegally after having been  
9 deported. You have to assume as a result of your plea today  
10 that you will be deported and that you will not be allowed  
11 back into the country by admission, that you be excluded from  
12 this country, and you will not be able to naturalize as a  
13 citizen of the United States.

14 Let me start with you, Mr. Martinez-Amaya, have you  
15 discussed the immigration consequences of your plea with your  
16 attorney?

17 DEFENDANT MARTINEZ-AMAYA: Yes.

18 THE COURT: How about you, Mr. Martinez-Orduna?

19 DEFENDANT MARTINEZ-ORDUNA: Yes.

20 THE COURT: All right. Now for all of you, knowing  
21 all the consequences I have mentioned, do you still want to  
22 plead guilty?

23 Ms. Branham?

24 DEFENDANT BRANHAM: Yes, sir.

25 THE COURT: Mr. Pace?

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1 DEFENDANT PACE: Yes, sir.

2 THE COURT: Mr. Martinez-Amaya?

3 DEFENDANT MARTINEZ-AMAYA: Yes.

4 THE COURT: Mr. Martinez-Orduna?

5 DEFENDANT MARTINEZ-ORDUNA: Yes.

6 THE COURT: And, Ms. Ginerva?

7 DEFENDANT GINERVA: Yes, I do, Your Honor.

8 THE COURT: All right. Now I need to take up some

9 additional matters with Ms. Ginerva, Mr. Pace, and

10 Ms. Branham because there's plea agreements in your cases.

11 And in those plea agreements you have agreed to do some

12 things and the government has agreed to do some things. Now

13 one of the things the government has agreed to do is dismiss

14 the original indictment against you. And if they don't

15 dismiss the original indictment against you, you will have a

16 right to withdraw your plea. All right? However, there is a

17 couple of other things I want to talk to you about. One is

18 in these plea agreements, each of you has waived the right to

19 appeal your sentence.

20 Now that goes back to the guidelines and the other

21 matters I mentioned. You might disagree with the way the

22 judge calculates the guidelines or you might disagree with

23 the sentence the judge ultimately chooses to impose.

24 Normally, you would have a right to appeal that. But in

25 exchange for the concessions of the government, the dismissal

1 of the original indictment and the filing of this  
2 information, you are giving up that right to appeal in this  
3 case.

4 Ms. Branham, do you understand?

5 DEFENDANT BRANHAM: Yes, sir.

6 THE COURT: Mr. Pace, do you understand?

7 DEFENDANT PACE: Yes, sir.

8 THE COURT: And, Ms. Ginerva, do you understand?

9 DEFENDANT GINERVA: Yes, Your Honor, I do.

10 THE COURT: All right. Now in addition to  
11 dismissing that original indictment, the government has also  
12 agreed to recommend a guideline reduction for you for  
13 acceptance of responsibility. Now that will lower your  
14 guideline range. On that matter, I need to remind you, you  
15 know, the ultimate sentencing decision, that is up to the  
16 district judge. And even if he rejects the recommendation or  
17 the non-opposition to a recommendation of the prosecutor, you  
18 can't withdraw your plea. That is up to the judge.

19 Do you understand, Ms. Ginerva?

20 DEFENDANT GINERVA: I do, sir.

21 THE COURT: Mr. Pace, do you understand?

22 DEFENDANT PACE: Yes, sir.

23 THE COURT: And how about you, Ms. Branham?

24 DEFENDANT BRANHAM: Yes.

25 THE COURT: All right. Let me ask each of you

1 this: Besides the promises and predictions in the plea  
2 agreement, has anybody made any promise to you or any  
3 prediction to you as to what your sentence will be?

4 Ms. Ginerva?

5 DEFENDANT GINERVA: No, Your Honor.

6 THE COURT: Mr. Pace?

7 DEFENDANT PACE: No, Sir.

8 THE COURT: Ms. Branham?

9 DEFENDANT BRANHAM: No, Sir.

10 THE COURT: All right. Has anyone -- let me ask  
11 Mr. Martinez-Amaya and Mr. Martinez-Orduna this matter as  
12 well. Gentlemen, has anyone made any prediction to you or  
13 any promise to you as to what your sentence will be?

14 Mr. Martinez-Amaya?

15 DEFENDANT MARTINEZ-AMAYA: No.

16 THE COURT: How about you, Mr. Martinez-Orduna?

17 DEFENDANT MARTINEZ-ORDUNA: No.

18 THE COURT: All right. And for all five of the  
19 defendants, it is very important for me to understand, has  
20 anyone forced you, or threatened you, or coerced you in any  
21 way into pleading guilty?

22 Ms. Ginerva?

23 DEFENDANT GINERVA: No, Your Honor.

24 THE COURT: Mr. Martinez-Orduna, has anyone forced  
25 you or threatened you into pleading guilty?

1 DEFENDANT MARTINEZ-ORDUNA: No.

2 THE COURT: Mr. Martinez-Amaya?

3 DEFENDANT MARTINEZ-AMAYA: No.

4 THE COURT: Mr. Pace?

5 DEFENDANT PACE: No, sir.

6 THE COURT: And, Ms. Branham?

7 DEFENDANT BRANHAM: No, Sir.

8 THE COURT: All right. Now the last thing I need  
9 to determine is whether there is a factual basis to support  
10 each of your pleas, whether there are facts that will support  
11 the plea that you are entering. And, actually, in these plea  
12 agreements that have been filed in Ms. Ginerva's case,  
13 Mr. Pace's case, and Ms. Branham's case, there is a factual  
14 basis, a rather lengthy factual basis set out in the plea  
15 agreement.

16 Let me ask you -- I will start with you,  
17 Ms. Ginerva, have you reviewed the facts having to do with  
18 you in this plea agreement?

19 DEFENDANT GINERVA: Yes, Your Honor, I have.

20 THE COURT: All right. And do you agree with these  
21 facts, ma'am?

22 DEFENDANT GINERVA: Yes, Your Honor, I do.

23 THE COURT: All right. And you understand that --  
24 I think I marked it, let me see here. It's at Pages ten and  
25 eleven, but then also at the end it indicates that in this

1 factual basis that you are accountable for between 16 and 32  
2 ounces of ice. Do you understand that ma'am?

3 DEFENDANT GINERVA: Yes, Your Honor, I do.

4 THE COURT: All right. Very well. Same sort of  
5 questions for you, Mr. Pace? Did you review the facts about  
6 you in this plea agreement?

7 DEFENDANT PACE: Yes, Sir.

8 THE COURT: And do you agree with those facts, sir?

9 DEFENDANT PACE: Yes, Sir.

10 THE COURT: And you understand that it is alleging  
11 that your role was in -- six to seven ounces of ice? Do you  
12 understand?

13 DEFENDANT PACE: Yes, Sir.

14 THE COURT: All right. Ms. Branham, same questions  
15 for you, ma'am. Did you review the facts about you in the  
16 plea agreement?

17 DEFENDANT BRANHAM: Yes, sir.

18 THE COURT: And do you agree with those facts?

19 DEFENDANT BRANHAM: Yes, Sir.

20 THE COURT: And you understand that the amount  
21 alleged as to you -- I am going to look right now, is about  
22 40 ounces of ice. Do you understand that?

23 DEFENDANT BRANHAM: Yes.

24 THE COURT: All right. Very well. Now let me turn  
25 to Mr. Martinez-Amaya. Mr. Martinez-Amaya, in your case

1 there is a brief factual basis that has been filed. It has  
2 been signed by you and your attorney and the attorney for the  
3 government. Let me ask you, sir, did you review the factual  
4 basis with your attorney?

5 DEFENDANT MARTINEZ-AMAYA: Yes.

6 THE COURT: And do you agree to the facts, sir?

7 DEFENDANT MARTINEZ-AMAYA: Yes.

8 THE COURT: All right. Now if I can have a factual  
9 basis in the case of -- the remaining case,  
10 Mr. Martinez-Orduna.

11 MR. SHEARER: Your Honor, we proffer that Bernardo  
12 Martinez-Orduna is an alien, citizen of Mexico and not a  
13 citizen of the United States. On or about October 27, 2015,  
14 federal agents found him at the Gonzales County Jail within  
15 the Western District of Texas. On October 10, 2008, the  
16 defendant was removed to Mexico from Laredo Texas.

17 As evidenced by a warrant of removal, there is his  
18 fingerprints, photograph. A review of official government  
19 records reveals the defendant did not receive consent from  
20 the Attorney General or the Secretary of Homeland Security to  
21 reapply for admission to the United States after his removal  
22 or deportation.

23 THE COURT: All right. Thank you, Mr. Shearer.

24 Mr. Martinez-Orduna, these are the facts the  
25 government believes they could prove in your case beyond a

1 reasonable doubt, if it went to trial. Do you agree with  
2 these facts, sir?

3 DEFENDANT MARTINEZ-ORDUNA: Yes.

4 THE COURT: Mr. Shaffer, did you have any comments  
5 as to the facts, sir?

6 MR. SHAFFER: No, Your Honor, I wanted to inform  
7 the court that I am familiar with the proposed factual basis,  
8 and we agree that it is accurate.

9 THE COURT: All right. Very well. Thank you, sir.  
10 All right, let me then ask, Ms. Ginerva, any questions about  
11 anything we have done today?

12 DEFENDANT GINERVA: No, Your Honor.

13 THE COURT: Mr. Martinez-Orduna, any questions,  
14 sir?

15 DEFENDANT MARTINEZ-ORDUNA: With all due respect, I  
16 would like to ask a question.

17 THE COURT: Of course, sir.

18 DEFENDANT MARTINEZ-ORDUNA: Well, I would like to  
19 ask for a bond or something so that I can stay here because  
20 my son, I have my son who is sick and I wanted to be able to  
21 stay.

22 THE COURT: All right, sir. I see that your  
23 attorney is standing up as well. Mr. Shaffer, did you--

24 MR. SHAFFER: If I might amplify a little bit, Your  
25 Honor.

1 THE COURT: Please go ahead.

2 MR. SHAFFER: This defendant has a U.S Citizen son,  
3 a six years old named Giovanne who is suffering from  
4 Leukemia.

5 THE COURT: All right.

6 MR. SHAFFER: The defendant was living in Gonzales  
7 with the child and the mother. The child receives treatment  
8 in Austin Texas, Your Honor. The mother does not drive.

9 THE COURT: I see.

10 MR. SHAFFER: The defendant was the primary means  
11 of making the child available to medical providers for  
12 treatment. I have explained to him that immigration will  
13 make its independent determination about his ability to  
14 remain in this country or removal. Indeed, I have painted  
15 the bleakest picture and indicated that it is my belief that  
16 he will be removed once the court imposes the sentence and  
17 that sentence is satisfied. However, I would be remiss if I  
18 didn't at least tell the court what his concern is. It is a  
19 valid concern. In my mind, it merely rises to a level of a  
20 necessity defense, but even if the court were to find that  
21 necessity existed for him to be here, immigration has a hold  
22 of him and that is not within the court's -- anyway.

23 THE COURT: All right.

24 MR. SHEARER: I wanted you to be aware, Judge. It  
25 is a very, very difficult, sad situation. I understand what

1 he is asking, although, I don't feel that there is any  
2 vehicle that Your Honor has to give him any relief.

3 THE COURT: All right. Thank you, Mr. Shaffer.

4 And, Mr. Martinez-Orduna, thank you for bringing  
5 this to my attention. Let me mention to you, sir, that you  
6 are coming up for -- I am about to tell you when, you are  
7 coming up for a sentencing hearing in the very near future.  
8 And at that time, I would urge your attorney and you to  
9 explain these circumstances to Judge Rodriguez, who will be  
10 deciding your sentence this month. So he will be able to  
11 hear you this month on this matter. If Mr. Shaffer can find  
12 anything that can be of a benefit for you or that Judge  
13 Rodriguez can, that is something that I think is worth  
14 raising because it is an issue. It may not raise to the  
15 right level of the necessity defense in this case, and in  
16 fact you have plead guilty. But it is a very important, what  
17 we call a mitigating circumstance that might explain to the  
18 judge why you were here and may affect your sentence. So I  
19 will urge you to raise this with the district judge who will  
20 be imposing sentence. I will mention to you, sir, that your  
21 sentencing hearing is set for May 31st, later this week --  
22 this month. And so you will need to discuss this matter with  
23 the judge as will your attorney in about three weeks.

24 Do you understand, sir?

25 DEFENDANT MARTINEZ-ORDUNA: Yes.

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1                   THE COURT: All right. Very well. Now, I do want  
2 to talk to everyone about sentencing in a little bit more  
3 detail. Ms -- but let me make the findings before I get into  
4 those talks about sentencing. I am going to make the  
5 following findings: Each of the defendants is competent to  
6 stand trial. Each of the defendants has consented to plea  
7 guilty before me, a magistrate judge. I will find that each  
8 of the defendants understands the nature of the charge they  
9 are pleading guilty to and the penalties they face by  
10 pleading guilty.

11                  I am going to find that each of the defendants  
12 understands their constitutional and statutory rights and  
13 they decided to waive those rights. That each of the  
14 defendants' pleas is freely, knowingly, and voluntarily made,  
15 and that there is a factual basis to support the plea.

16                  Let me ask you, Mr. Martinez-Amaya, did you have  
17 any questions at time, sir?

18                  DEFENDANT MARTINEZ-AMAYA: No.

19                  THE COURT: Mr. Pace, any questions at this time?

20                  DEFENDANT PACE: No, Sir.

21                  THE COURT: And, Ms. Branham, any questions at this  
22 time?

23                  DEFENDANT BRANHAM: No, sir.

24                  THE COURT: All right. Now I want to talk to each  
25 of you very briefly about sentencing. Sentencing in the

1 cases of Mr. Pace and Ms. Ginerva are set for August 4th at  
2 9:30 in the morning. Ms. Branham, yours is August 18 at 9:30  
3 in the morning. Now.

4 In each of your cases, in advance of the sentencing  
5 hearing, the probation officer is going to create something  
6 called a presentence report.

7 That is a report with information about you, your  
8 background, the nature of the offense. It will also have  
9 information about the guidelines that I mentioned. As part  
10 of creating that report, the probation officer will probably  
11 want to interview each of you. Now you have a right to have  
12 your attorney present for the interview. You can disagree or  
13 object to anything that you disagree with in the report.

14 You will have a right to comment on the report at  
15 sentencing. And each of you will have the right to speak to  
16 the judge before sentence is imposed.

17 Now let me turn to the cases of Mr. Martinez-Amaya  
18 and Mr. Martinez-Orduna. Gentlemen, in your cases, the  
19 probation officer will create a modified presentence report.  
20 It does not require an interview of you, and so that means  
21 your sentencings will be earlier.

22 So, Mr. Martinez-Orduna, your sentencing as I  
23 mentioned is set for May 31st. Mr. Martinez-Amaya, yours is  
24 for May 19th. Now in each of your cases, again, you will  
25 have a right to object to anything that you disagree with in

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1 the report. Each of you have the right to comment on the  
2 report at sentencing. And I want to repeat, that each of you  
3 have the right to speak to the judge before sentence is  
4 imposed.

5 And I would urge you to do that,  
6 Mr. Martinez-Orduna, given the circumstances that you wanted  
7 to present to me today. All right?

8 DEFENDANT MARTINEZ-ORDUNA: Yes.

9 THE COURT: All right. Now the last thing I want  
10 to go over is with Ms. Ginerva. Ms. Ginerva, I see that you  
11 are on bond at this time. And I received a bond status  
12 report from the Pretrial Services Office which indicates  
13 you're meeting so far the conditions of release in this case.  
14 So it is my intention to allow you to remain on bond, unless  
15 there is some objection from the government.

16 MR. SHEARER: No, Your Honor.

17 THE COURT: All right. Very Well. Ms. Ginerva, I  
18 am going to allow you to remain on bond on the exact same  
19 conditions that you have been on up to now. I will remind  
20 you not to violate the conditions of bond. One of the worst  
21 things you can do, as your attorney will tell you, is to  
22 violate bond right before sentencing in your case.

23 Anything further in Ms. Ginerva's case?

24 MR. BROWN: No, Your Honor.

25 DEFENDANT GINERVA: Thank you, Your Honor.

1                   MR. SHEARER: Nothing from the government, Your  
2 Honor.

3                   THE COURT: All right. For, how about for  
4 Ms. Branham?

5                   MR. FLORES: No, Your Honor.

6                   THE COURT: All right. For Ms -- Mr. Pace, rather?

7                   MS. PARKER: No, Your Honor.

8                   THE COURT: All right. And for Mr. Martinez-Amaya?

9                   MR. PICKELL: No, Your Honor.

10                  THE COURT: And for Mr. Martinez-Orduna? Anything  
11 further, Mr. Shaffer?

12                  MR. SHEARER: Nothing else, Your Honor.

13                  THE COURT: All right. That concludes the  
14 re-arraignment and guilty plea proceedings in each of these  
15 cases. We will be in recess at this time.

16                  THE COURT SECURITY OFFICER: All rise.

17                  (Adjournment.)

1 UNITED STATES DISTRICT COURT )

2 WESTERN DISTRICT OF TEXAS )

3 I certify that the foregoing is a correct  
4 transcript from the FTR RECORDING of proceedings in the  
5 above-entitled matter. I further certify that the transcript  
6 fees and format comply with those prescribed by the Court and  
7 the Judicial Conference of the United States.

8 Date signed: December 29, 2016.

9  
10 /s/ Leticia Ornelas Rangel  
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